

POWELL, GOLDSTEIN, FRAZER & MURPHY LLP

ATTORNEYS AT LAW

www.pgfm.com

PLEASE RESPOND: Washington Address

Direct Dial: 202-624-7218
email: crolstac@pgfm.com

Direct Dial: 202-624-7330
email: bkappel@pgfm.com

Sixteenth Floor
191 Peachtree Street, N.E.
Atlanta, Georgia 30303
404 572-6600
Facsimile 404 572-6999

Sixth Floor
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202 347-0066
Facsimile 202 624-7222

November 5, 1997

VIA FIRST CLASS MAIL

Kamau Philbert, Esquire.
Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MURs 4322 and 4650

Dear Mr. Philbert:

We have received your letter of October 29, 1997, in which you continue to attempt to justify your refusal to initiate an investigation of several apparent violations of 2 U.S.C. 437g(a)(12) by three individuals associated with former Representative Enid Greene's 1994 campaign. We are, frankly, surprised at your cramped interpretation of the Commission's enforcement powers. Your restrictive reading of section 437g(a)(12) is simply inconsistent with prior statements of enforcement policy made by several different Commissioners and the General Counsel himself at various FEC conferences, workshops and seminars we have attended over the past seven years.

Moreover, your supervisor, Mark Allen, conceded as much during our October 15, 1997, telephone call. Mr. Allen pointed out, however, that while the Commission may have the authority to initiate an investigation based on the information provided in our October 2, 1997, letter, that authority is discretionary and, in all likelihood, the Commission would not exercise its authority to open an investigation in this case. In addition, Mr. Allen indicated that any complaint that we might file based on our October 2 letter would also not likely be a high enforcement priority.

We are disappointed, but not surprised, that the Commission would refuse to initiate a section 437g(a)(12) investigation that might implicate the Commission's own personnel. We are not willing, however, to squander our clients' resources by pursuing an exercise in futility. Nor are we interested in providing our clients' political enemies with a public forum to attack the veracity of our clients. Accordingly, while we continue to believe that the three individuals named in our October 2 letter committed serious violations of section 437g(a)(12), we will not pursue this issue further by filing a formal complaint.

Nov 7 12 45 PM '97

Kamau Philbert, Esquire
November 5, 1997
Page Two

Despite this turn of events, our clients have indicated to us that they wish to continue to cooperate with the Commission's investigation. Accordingly, we would like to confirm our understanding regarding what additional documentation will be provided to the Commission. It is our recollection that, while we were in Salt Lake City in September for the depositions of D. Forrest Greene and Enid Greene, we agreed to provide you with the following documents under the following conditions:

- Mr. Greene's personal calendars (if they still exist) for the years 1992 through 1995. In order to protect Mr. Greene's personal privacy, these calendars would be redacted to exclude any information not relevant to your investigation and would not become part of the public record of this matter;
- Copies of cancelled checks written by Mr. Greene to Ms. Greene reflecting his payments to her for the purchase of the Penrose Drive property;
- Copies of password-protected documents recovered from Joseph P. Waldholtz's laptop computer after he fled on November 11, 1995, to the extent that such documents are relevant to your investigation and have not already been provided; and
- A memorandum reflecting how our firm was able to retrieve the password-protected documents from Joseph P. Waldholtz's laptop computer, including the names of those employees of our firm who were involved in retrieving the documents.

We will provide these materials to you in the near future.

During the depositions of Mr. Greene and Ms. Greene, you indicated that we would have the opportunity to review the transcripts of the depositions at the Commission's offices here in Washington, D.C. We would like to arrange a mutually convenient date to review the transcripts so that we may make any corrections that may be necessary. We have already been notified by the court reporters and you that both depositions have been transcribed and are available for Mr. Greene and Ms. Greene to review in Salt Lake City.

We would also like to address two other matters you raised in your October 29 letter. Attached please find an additional copy of the October 8, 1997, letter to Ms. Greene from the Utah State Bar announcing that the Office of Attorney Discipline had opened a file on Ms. Greene as a direct result of The Salt Lake Tribune article (which was based on statements in violation of Section 437g(a)(12)). A copy of the Utah State Bar letter was attached to our October 14, 1997 letter, but apparently never reached your office.

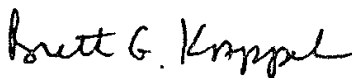
Kamau Philbert, Esquire
November 5, 1997
Page Three

Finally, you have asked for a copy of the declination letter the United States Attorney's Office provided to us at the conclusion of its year-long grand jury investigation of Ms. Greene's 1994 campaign. This letter contains conclusions by the United States Attorney's Office which are derived from secret grand jury testimony and materials. As you are no doubt aware, this material is protected by Rule 6(e) of the Federal Rules of Criminal Procedure and the Commission would be prohibited from obtaining this from the Department of Justice pursuant to Rule 6(e)(3)(C)(i). See U.S. v. Baggot, 463 U.S. 476 (1993). We will not provide this to you and thereby allow you to do an end-run around the strict secrecy requirements of Rule 6(e). In fact, we are surprised that you would attempt to do so.

Sincerely,



Charles H. Roistacher



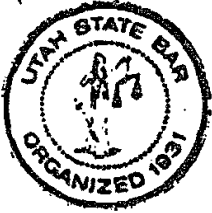
Brett G. Kappel

FOR POWELL, GOLDSTEIN, FRAZER & MURPHY LLP
Counsel to D. Forrest Greene, Enid Greene, Enid '94 and Enid '96

Attachment

cc: Lawrence Noble, Esquire
Mark Allen, Esquire
D. Forrest Greene
Enid Greene

CERTIFIED MAIL - Z 260 808 745
RETURN RECEIPT REQUESTED



Utah State Bar

Office of Attorney Discipline

845 South 200 East, Suite 205 • Salt Lake City, Utah 84111-3634

Telephone: (801) 531-9110 • FAX: (801) 531-9912 • WATS: 1-800-828-9077

E-mail: oad@utahbar.org

Stephen R. Cochran

Chief Disciplinary Counsel

Carol A. Stewart

Deputy Chief Disciplinary Counsel

Kate A. Toomey

Assistant Disciplinary Counsel

Charles A. Gruber

Assistant Disciplinary Counsel

Mark Y. Hirste

Assistant Disciplinary Counsel

October 8, 1997

Enid Greene
1456 Penrose Drive
Salt Lake City, UT 84103

Re: Notice of Investigation

Dear Ms. Greene:

This letter is intended to serve as notice that this office has opened a file concerning the Federal Election Commission's investigation of your 1994 congressional campaign. At such time as the FEC makes a finding in this matter, the Bar may activate its own investigation, and in that event, a formal statement will be requested of you. No formal statement is required pending the conclusion of the FEC's investigation.

Please call me if you have any questions about this matter.

Sincerely,

Kate A. Toomey

Kate A. Toomey
Assistant Disciplinary Counsel

KAT/sak